



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1118 (Advisory Opinion Proceeding)]

Certain Movable Barrier Operator Systems and Components Thereof; Notice of a Commission Determination to Adopt in Part an Advisory Opinion; Termination of Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to adopt in part an initial advisory opinion (“IAO”) (Order No. 44, as corrected) issued by the presiding administrative law judge (“ALJ”). The Commission has determined to adopt the IAO’s finding of non-infringement of claims 1 and 21 of U.S. Patent Nos. 7,755,223. The Commission has determined not to adopt the portions of the IAO recommending rescission of the remedial orders and discussing grant of a motion for summary determination of non-infringement. The advisory opinion proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on June 11, 2018, based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (“CGI”) of Oak Brook, Illinois. 83 FR 27020-21 (June 11, 2018). The complaint alleges that respondents Nortek Security & Control, LLC of Carlsbad, California;

Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, “Nortek”) violated section 337 of the Tariff Act, as amended, 19 U.S.C. 1337 (“Section 337”) by importing, selling for importation, or selling in the United States after importation garage door openers (“GDOs”) and other movable barrier operator systems that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,755,223 (“the ’223 patent”), 8,587,404 (“the ’404 patent”), and 6,741,052 (“the ’052 patent”). *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *Id.*

On December 3, 2020, the Commission determined that Nortek violated Section 337 by way of infringing claims 1 and 21 of the ’223 patent. The Commission issued a limited exclusion order and cease and desist orders against Nortek and imposed a bond in the amount of 100 percent of the entered value of the covered products during the period of Presidential review.

On January 21, 2021, the Commission granted Nortek’s opposed request to institute an advisory opinion proceeding, pursuant to Commission Rule 210.79 (19 CFR 210.79). 86 FR 7105 (Jan. 26, 2021); Comm’n Order (Jan. 21, 2021). On January 28, 2021, CGI and Nortek executed a joint stipulation that the subject GDOs do not infringe the ’223 patent because they do not have two operating modes at two different energy levels (*i.e.*, they do not have a “beam off” or “sleep mode”). On February 9, 2021, Nortek filed an unopposed motion for summary determination and statement of undisputed facts that the subject GDOs do not infringe the ’223 patent.

On May 24, 2021, the presiding ALJ issued an amended IAO finding the subject GDOs do not infringe claims 1 and 21 of the ’223 patent. Order No. 44 (May 24, 2021) (as amended). The amended IAO also contains language ostensibly granting Nortek’s unopposed motion for summary determination of non-infringement and recommends that the Commission issue an order rescinding the remedial orders. *See id.* at 6.

On June 1, 2021, CGI filed a petition for review of Order No. 44, opposing the portion of the IAO recommending rescission of the remedial orders. CGI did not oppose the IAO’s finding

that the subject GDOs do not infringe claims 1 and 21 of the '223 patent. Nortek did not file a response to CGI's petition.

The Commission has determined to adopt the portion of the IAO finding that the subject GDOs do not infringe claims 1 and 21 of the '223 patent. The Commission, however, has determined not to adopt the recommendation to rescind the remedial orders, as modification or rescission of remedial orders is governed by Section 337(k) (19 U.S.C. 1337(k)) and Commission Rule 210.76 (19 CFR 210.76). The Commission has also determined not to adopt that portion of the advisory opinion discussing granting Nortek's motion for summary determination of non-infringement.

This advisory opinion proceeding is hereby terminated.

The Commission voted to approve these determinations on June 23, 2021.

The authority for the Commission's determinations is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 24, 2021.

Lisa Barton,

Secretary to the Commission.

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